Paper No. 19

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

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Ex parte PAUL W. LACKLER

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Appeal No. 2000-1576
Application 09/169,179

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ON BRIEF

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Before FRANKFORT, McQUADE, and NASE, Administrative Patent Judges.

FRANKFORT, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 through 9, all of the claims pending in this application.

Appellant's invention is generally directed to an anchor clip for securing a supporting spring arrangement of a seat or back cushion to the rails of an article of furniture and, more particularly, to a squeakless furniture spring anchor clip (e.g., as seen in Fig. 1 and Figs. 1A-1C) that includes a plastic liner (20) on the interior surface of a spring supporting or curved hook portion (16) of the clip to prevent squeaking of the clip and spring contact area during use. Even more particularly, appellant's invention is directed to providing a spring anchor clip having an arrangement of liner holding members in the form of prongs (e.g., 52, 54, 56) that are "punched out" (spec., page 3) or "struck from" (spec., page 8) the metal material of the clip body and used to mechanically hold the plastic liner securely within the curved hook portion of the clip when such prongs are bent over the plastic liner. Appellant notes (spec., page 4) that the prongs may be simply folded down over the edges of the liner, or may penetrate through the liner and then be pressed down. On page 10 of the specification, appellant points out that when the liner holding members (52, 54, 56, 90)

> are struck from the metal material of the clip body 11, there will be through holes left in the clip body 11 under the liner holding members 52, 54, 56 and 90 when they are formed from the material of the body 11. Accordingly, when the plastic liner 20 is fed into the curved spring supporting portion 16 of the body 11 as by sliding or dropping it into place, the liner 20 will be disposed over these through holes. Thus, folding the holding members 52, 54, 56, or 90 down onto the liner 20 so as to clamp the liner in place will generally cause some sinking of the liner 20 into the through openings associated with respective ones of the folded over or clamped holding members so as to enhance the ability of the members to keep the liner 20 fixed and clamped against the spring supporting portion 16 without sliding thereof during use with flexing of the spring.

Independent claim 1 is representative of the subject matter on appeal and a copy of that claim, as reproduced from Appendix A of appellant's brief, is attached to this decision.

The references relied upon by the examiner in rejecting the appealed claims are:

Bechtoldt et al. (Bechtoldt) 5,542,775 Aug. 6, 1996
Ayres et al. (Ayres) 5,833,064 Nov. 10, 1998

Claim 1 stands rejected under 35 U.S.C. § 102(b) as being

clearly anticipated by Bechtoldt.

Claims 1, 2 through 6 and 9 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Ayres.

Claim 7 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Ayres in view of Bechtoldt.

Claim 8 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Ayres.

Rather than attempt to reiterate the examiner's full commentary with regard to the above-noted rejections and the conflicting viewpoints advanced by the examiner and appellant regarding the rejections, we make reference to the examiner's answer (Paper No. 16, mailed March 13, 2000) for the reasoning in support of the rejections[1], and to appellant’s brief (Paper

[1] We observe that the copy of the examiner’s answer in the file of this application is missing page 3. However, since it appears that the missing information does not go to the merits of rejections before us on appeal, we have merely noted this

No. 15, filed February 10, 2000) and reply brief (Paper No. 17, filed May 23, 2000) for the arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to appellant's specification and claims, to the applied prior art references, to the declaration filed by Mr. Lackler under 37 CFR § 1.132 (Paper No. 6) and to the respective positions articulated by appellant and the examiner. As a consequence of our review, we have made the determinations which follow.

With regard to the rejection of claim 1 under 35 U.S.C. §102(b) relying on Bechtoldt, it is the examiner's position that

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discrepancy and leave it to the examiner and appellant to resolve this problem during any further prosecution of the application subsequent to the appeal.

the squeakless furniture spring anchor clip therein includes "at least one line[r] holding member (i.e., ridge 28) struck (i.e., "swaged out"; column 3, lines 53 and 54) from the metal material of the curved spring supporting portion . . . for keeping the line [sic, liner] against the curved spring supporting portion" (answer, page 5). In maintaining this rejection, the examiner has relied upon a standard dictionary definition of the term "swage" (answer, page 8) and urged that the term "swaged" is considered to encompass the term "struck." On pages 5-7 of the reply brief appellant has strongly argued that the examiner's interpretation of the "swaged" embossed ridge (28) of Bechtoldt as encompassing the "struck" liner holding member of the present invention (claim 1) is erroneous and that the term "struck from" must be interpreted in light of appellant's specification and the meaning ascribed to it therein.

After having reviewed several technical dictionaries, Mark's Handbook (1951) and appellant's specification, we are in complete agreement with appellant that the term "struck

from" would have been understood by one of ordinary skill in the art of metal working as meaning that the at least one liner holding member of claim 1 on appeal is formed by an operation that traverses the entire plastic range of deformation to the point of failure and results in a punching out or severing action being applied to the metal material of the base of the hook portion of the clip and thereby provides a liner holding member (e.g., a prong) that is partially separated from the metal material of the clip body and leaves behind a through hole in the clip body of a configuration generally conforming to that of the holding member. By contrast, the term "swage" or "swaged" would have been understood by one of ordinary skill in the art of metal working as meaning a cold forming operation that results in a shaping or bending of the metal material by squeezing or pressing it into an appreciably different shape by thinning and flow of the metal material, without any failure thereof.

In light of the foregoing, it is clear to us that the anchor clip of Bechtoldt does not anticipate claim 1 on

appeal, because the embossed ridge (28) that is "swaged" out of the base portion (12) therein would not have been viewed by one of ordinary skill in the art as being the same as the liner holding member of claim 1 on appeal that is "struck from" the metal material of the spring supporting portion of the clip. Accordingly, we will not sustain the examiner's rejection of claim 1 under 35 U.S.C. § 102(b) as being anticipated by Bechtoldt.

As for the examiner's rejection of claims 1 through 6 and 9 under 35 U.S.C. § 102(e) as being anticipated by Ayres, we find ourselves in agreement with appellant's position (brief, pages 3-5 and reply brief, pages 2-5) that appellant has provided sufficient evidence to establish that the patentee (Donald B. Ayres) derived his knowledge of the liner holding members (e.g., tabs 91-94) disclosed in that patent from appellant and that appellant was the inventor of that subject matter. Accordingly, we conclude that appellant has successfully removed the Ayres' patent as a reference against the present application. For that reason, we will not sustain

the examiner's rejection of claims 1 through 6 and 9 under 35 U.S.C. § 102(e) based on Ayres.

Regarding the examiner's additional rejections of claims 7 and 8 under 35 U.S.C. § 103(a) based on Ayres alone or on the collective teachings of Ayres and Bechtoldt, our conclusion above that appellant has successfully removed Ayres as a reference against the present application sounds the death knell for these rejections as well. Accordingly, the examiner's further rejections of claims 7 and 8 under 35 U.S.C. § 103(a) will not be sustained.

In light of the foregoing, we have refused to sustain each and every one of the examiner's rejections before us on appeal. Thus, the decision of the examiner to reject claims 1 through 6 and 9 of the present application under 35 U.S.C. § 102(e), claim

1 under 35 U.S.C. § 102(b) and claims 7 and 8 under 35 U.S.C. § 103(a) is reversed.

REVERSED

CHARLES E. FRANKFORT Administrative Patent Judge	)	
JOHN P. McQUADE Administrative Patent Judge	)	BOARD OF PATENT APPEALS AND INTERFERENCES
JEFFREY V. NASE Administrative Patent Judge	)	

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APPENDIX

1. A clip for securing furniture springs to furniture rails, the clip comprising:

a body of metal material;

a generally flat base portion of the body for engaging a furniture rail;

a spring supporting portion of the body extending out from the base portion and curving back thereover to an edge thereof for maintaining a portion of a furniture spring in a substantially predetermined position relative to the furniture rail;

a plastic liner secured to the curved spring supporting portion of the body for engaging the spring portion to minimize squeaking caused by metal-to-metal contact between the curved spring supporting portion of the clip body and the spring portion; and

at least one liner holding member struck from the metal material of the curved spring supporting portion of the body and spaced from the edge thereof for keeping the liner against the curved spring supporting portion of the clip body.